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UNCLAS KUWAIT 002231

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STATE FOR EB/IFD/OIA/JPROSELI AND L/CID/JNICOL

E.O. 12958: N/A

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SUBJECT: KUWAIT INPUT FOR 2005 REPORT OF INVESTMENT
DISPUTES AND EXPROPRIATION CLAIMS

REF: STATE 70014

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1. (U) As requested reftel, post is submitting the following update for inclusion in the 2005 Report on Investment Disputes and Expropriations Claims.

2. (U) A. Claimant Designation: Claimant A vs. Kuwait Ministry of Finance, Offset Department.

3. (U) B. Year When Dispute Arose: The dispute arose on October 5, 1997 and is ongoing.

4. (U) C. Case History: Claimant A acted as the third party broker for various offset obligors under the Ministry of Finance's Offset Program. Claimant A's business plan for an offset project was approved by the Ministry of Finance's Offset Department (formerly known as the Program Executive Office) in a letter dated January 24, 1996. As a condition of the approval letter, Claimant A had to fulfill certain requirements as instructed by the Offset Department, such as providing the names of offset obligors within a four-month period, completing feasibility studies, establishing a local project company and obtaining approval for its project from the Ministry of Electricity and the Ministry of Water and Public Works. Claimant A fulfilled all of its obligations, but in an October 5, 1997 letter from the Undersecretary of the Ministry of Finance, Claimant A's business plan was revoked due to a "technical default" and the Ministry threatened to apply penalties under the Offset Program. The Offset Department claimed that Claimant A failed to meet the four-month deadline for naming the committed obligors.

5. (U) Case History, Continued: After several attempts for an amicable resolution to this issue, Claimant A filed a case in the Kuwaiti Court of First Instance against the Ministry of Finance's Offset Department. The claim amount was approximately USD ten million. The court ruled against Claimant A on October 31, 1999. Claimant A appealed on January 22, 2000, and the Court of Appeals overturned the lower court's ruling on June 17, 2001. The Court of Appeals returned the case to the Court of First Instance, which in turn referred the case to the Ministry of Finance's Experts Department in May 2002, to calculate the damages owed to Claimant A. The Experts Department set damages at 1,386,609 Kuwaiti dinar (about US\$4.6 million). However, the Court of First Instance refused to enter the case for final judgment, saying it disagreed with the Experts Department's recommendation. On October 31, 2004, the Court of Appeals reversed the Court of First Instance's refusal to enter the case for final judgment, ruling in favor of Claimant A and supporting the Experts Department's recommendation. The Ministry of Finance has appealed the Court of Appeals' decision, and the case is now pending before the Court of Cassation. Claimant A expects a final ruling by the end of October 2005.

6. (SBU) Separate List of Claimants' Names: Claimant A -- Middle East Networks, Ltd.
LEBARON